

AN OUTLINE FOR ANTI-COMMUNIST LEGISLATION

1. Laws Against Insurrection.

Most activities of Communist Parties must be considered as subversive. For legislative purposes, it will be necessary to refer to specific overt acts, such as, for instance:

a. advocating the overthrow of the government by force or by other unconstitutional means,

b. interfering with the armed forces, either in order to misuse them for such overthrow, or to undermine their ability to fulfil their constitutional duties, either against foreign or against domestic enemies,

c. conspiracy to undertake either (a) or (b).

2. Laws Against Private Interference with Foreign Relations.

Communist parties in non-Communist countries throughout the world, take their guidance on foreign policy questions from the Communist party of the Soviet Union. Criminal laws have been passed by various countries designed to protect the integrity of the foreign policy of that country, either by prohibiting unauthorized persons to contact foreign governments or otherwise engage in foreign affairs, or by ordering all persons other than diplomats who act in any manner (legal counsel, lobby, public relations etc.) in the interest of a foreign principal to register as "agents of foreign governments" or agents of other foreign employers.

3. Laws Against Sabotage.

War or threatened war always involves the danger of damaging a country's defenses by sabotage. Saboteurs may be enemy civilian agents or soldiers who enter the country out of uniform. Saboteurs may also be enemy sympathizers who reside in the country. Laws making sabotage a crime are very common and of long standing. Legislation to prevent sabotage is of more recent origin. The United States passed an Emergency Detention Act in 1950. This states that in the event of an "internal security emergency" Congress declares that the national safety requires the detention of those "who there is reasonable ground to believe will commit or conspire with others to commit espionage or sabotage." When the act becomes operative, the Attorney General is empowered to apprehend and detain those potential saboteurs and spies described in the preamble. Certain safeguards are provided for persons arrested under this act. Among the criteria used to decide whether a person is properly detained are: Has he been trained in sabotage and espionage

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by a foreign government, by the Communist Party, or by any other subversive organization? Has he committed acts of espionage or sabotage in the past?

h. Laws Relating to the Security of Government Information.

The Pan American Union in its report of 1953, Strengthening of Internal Security, recommended that it would be better to adopt precautionary measures that might be required to prevent the agents of international communism from having access to sources of military, political or economic information, vital to the defense of the State or of the Continent in case of an armed conflict than to rely upon criminal laws punishing espionage applicable after the event.

Most countries have either laws or administrative regulations protecting sensitive government information. Such protection has to cover four major areas:

- a. Identifying sensitive information: procedures for classifying and declassifying documents, responsibility for safeguarding them;
- b. Secure Custody: regulations that such documents must be kept only in safe containers, under adequate guard, etc.;
- c. Security of Communications: regulations protecting the transmission of classified information, whether by mail, courier, telephone, telegraph or in any other way;
- d. Limiting access to classified information: enforcing the "need-to-know" principle, requiring special clearances for persons allowed access to such information, penalties against disclosing such information to unauthorized persons, as well as against negligence which might result in accidental disclosures.

5. Laws Against Espionage.

Espionage used to be employed by one power against another, mainly in time of war or in preparation for war. The totalitarian movements of our time, especially the Communists, have developed the concept of "total espionage" in time of peace as well, sifting out sensitive political, economic and military information for the benefit of the Communist Party of the underground Communist Fifth Column, while at the same time also benefiting the Governments of the Soviet Union and of other communist countries.

A frequent and close connection is found between the laws against espionage and those against treason. Often the carrying out of one is dependent on the perpetration of the other. In other cases the nationality of the perpetrator determines the classification of the crime.

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The growing necessity of providing better defense against totalitarian aggression has led to a broader definition of espionage. A Cuban law of 1942 in defining fifth column activities was directed against the security of the State perpetrated by a national rather than an alien.

In the United States the first law of general applicability on espionage is the Espionage Act of 1917. Later legislation has defined the offense in broader terms, added new offenses, and increased the period of the Statute of Limitations. The Atomic Energy Act of 1946 has detailed provisions on the subject of espionage.

6. Loyalty of Government Employees.

While legislation on the subject of loyalty and security of government employees has been abundant, such programs have been primarily developed administratively, by the executive branch of the Government. The loyalty of applicants for government positions is determined by investigation prior to appointment. After appointment, disloyalty, as determined by investigation, is grounds for dismissal. Security standards are defined in various laws and regulations. Employment of persons who fail to meet the security standards is prohibited.

In the United States an employee is required to take a loyalty oath which includes, in addition to the usual oath of allegiance, the declaration that he does not and will not while he is employed, belong to or affiliate with any organization that advocates violent overthrow of the Government. The United States Attorney General has officially promulgated lists of subversive organizations.

7. Security Clearance of Employees Working on Defense Contracts.

A program for screening employees of private contractors who have access to defense information, and for screening the management of the plants, may be as important as the security and loyalty program applicable to Government employees. A scientist working on the atomic research of the Government on a contract basis is in a more "sensitive" position as regards national security than a minor employee of the Government who handles no classified information.

The regulations for screening employees working on defense contracts are similar to those applying to Government employees.

8. Restrictions Against Communists in Labor Unions, etc.

In the United States the Taft-Hartley Act of 1947 requires the officers of any labor union using the machinery of the National Labor Relations

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Board to take a non-Communist oath. A labor organization which fails to comply with this provision is denied access to the facilities of the National Labor Relations Board. The Labor Board has taken the position that its function does not include looking behind the affidavits to ascertain if the facts sworn to are true. The Courts have upheld the Board in this view.

In other countries, it might be advisable to formulate similar regulations on a broader basis, applicable not only to labor unions, but to all kinds of associations. In countries with little industry or weak labor unions, Communist activities in farmers and students groups, trade associations, or cooperatives may be more significant.

9. Suppression of Subversive Organizations.

In various American States, three steps have been taken with varying success to suppress Communist organizations as subversive. First, laws have been passed requiring that all potentially suspect associations should be registered with a government bureau in order that the nature, purposes and sources of income of such associations may be known.

Second, laws have attempted to establish control and supervision over those organizations with respect to which some suspicions might arise.

In the third place, laws have been passed outlawing associations or organizations when it was proved that these were subversive in character and laws have attempted to set up machinery for maintaining supervision over the directors and principal members of organizations so disbanded.

Among the criteria used to determine the illegality of associations have been the following: that of the nationality of the association, or rather, of its founders, directors or members; that of the political purposes of the association; that of the connection between the organization and foreign States, governments, entities or individuals; and finally, that of certain external features that indicated the dangerous character of the association, such as military discipline or the use of certain symbols intended to manifest a determined ideological adherence.

The system of registration of associations was adopted in seven American countries (Argentina, Brazil, Cuba, the United States, Paraguay, the Dominican Republic and Venezuela). The laws vary widely regarding the type of associations required to register, the nature of the information required in the registration procedure, and the penalties imposed in case of failure to comply with the registration requirement. There is also variation in the systems used for the control and supervision of those organizations listed as suspicious; as well as in the criteria adopted in disbarring organizations found subversive.

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Reference to a few laws will illustrate what has been done. For instance, the information or functioning of political parties or organizations connected with foreign governments has been prohibited by law. Article 116 of the Nicaraguan Constitution of 1950 "forbids the formation and activity of political organizations that are international or foreign in character." To carry out this provision, article 20 of the Electoral Law of 1946 provides for the "abolition of a political party and the outlawing of its activities... when it conspires with or is subordinate to a foreign government, political party or political organization..."

Laws have been passed prohibiting or outlawing Communist parties and organizations that are believed to be assimilated to them. The Peruvian Decree-law of November 1, 1948 declared that the Communist Party and the American People's Revolutionary Alliance were outlawed. The Venezuelan Decree of May 13, 1950 dissolved the Communist Party in that country.

In the United States, one of the important laws on the suppression of subversive organizations is the Internal Security Act of 1950 which is popularly known as the McCarran Act. Title I of this Act, officially designated as the Subversive Activities Control Act of 1950, requires the registration of "Communist-action" and "Communist-front" organizations.

The Act defines a "Communist-action" organization as an organization in the United States other than one diplomatically accredited which (1) is substantially controlled by the foreign government or foreign organization controlling the world Communist movement and (2) which operates primarily to advance the objectives of that movement. A "Communist-front" organization is one which is (1) substantially controlled by a "Communist-action" organization, and (2) which is primarily operated to aid a Communist-action organization, a Communist foreign government, or the world Communist movement.

Various duties and disabilities are imposed on organizations and the members of organizations found to be Communist. Such organizations must file with the Attorney General statements about their financial affairs, names and addresses of their officers, and in the case of Communist-action organizations, the names and addresses of members. Members of Communist organizations are barred from nonselective government employment and from employment at defense facilities. Other disabilities are also imposed. Penal sanctions are attached to violations of the registration scheme, to ignoring the disabilities attendant to registration, to false registration statements and false annual reports including failure to list names and addresses of individual members when required.

The Act established a five-man bipartisan Subversive Activities Control Board before which proceedings are conducted to determine (1) whether an organization is a Communist-action or a Communist-front organization, and (2) whether an individual is a member of a Communist-action organization. Proceedings before the Board are initiated by the Attorney General.

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Additional legislation designed to strengthen internal defenses against the Communist conspiracy was passed in the United States in 1954. The Communist Control Act of 1954 set up a new category of Communist-infiltrated organizations subject to the restrictions and penalties of the 1950 McCarran Act. This part of the law was aimed primarily at labor unions which have come under Communist domination. The law denied to the Communist party any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States, but it did not specifically make membership in the Communist party a crime. A new law attempted to strengthen by the hand of investigators and prosecutors in the field of internal security by granting immunity from prosecution based on information disclosed before legislative committees and grand juries. The aim of the law was to encourage participants or former participants in the Communist conspiracy to talk without fear that they personally will suffer from disclosing information in their possession.

10. Alien Exclusion.

In the United States, laws have been passed which exclude aliens who are found to be subversive from entering the country. The statute under which anarchists and later Communists were excluded from the United States was first passed in 1903. Amendments to this law have elaborated the definition of subversives and tightened the substantive and procedural rules of exclusion. The Internal Security Act of 1950 added provisions naming the Communist Party and specifying in some detail Communists and other totalitarians whom Congress desired to exclude.

11. Deportation of Aliens Found to be Subversive.

The United States Immigration Act of 1903 provided that aliens who had entered the country illegally might be deported within three years after their entry. An alien who at the time of entry concealed his membership in an organization which advocated violent overthrow of the Government was subject to deportation. In 1917 Congress extended the deportation provision to include aliens found any time after entry advocating subversive activities. The deportation of Communist aliens was specifically provided for by the Subversive Activities Control Act of 1950. This provision was continued in the Immigration and Nationality Act of 1952. This last mentioned Act includes provisions for the custody of aliens before and after a deportation order, provisions for releasing them on parole and under bond on terms prescribed by the Attorney General, and for the hearing of the charges.

12. Naturalization and Denaturalization as Related to Subversion.

Since 1903 there has been in the United States a legal prohibition against naturalizing opponents of organized governments, advocates of political assassination, and members or persons affiliated with organizations which adhere to these beliefs. The Nationality Act of 1940 also forbids naturalization of a person who during the ten years prior to filing his

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petition has been a member of, or affiliated with, any organization advocating the prescribed doctrines. The Subversive Activities Control Act of 1950 specifically forbids the naturalization of Communists and members of other totalitarian parties.

The Immigration and Nationality Act of 1952 provides for denaturalization on the basis of "concealment of a material fact" and "willful misrepresentation." The effect of denaturalization is to treat the naturalization, for most purposes, as if it had never existed. Naturalization certificates have been revoked for denial or concealment at the time of naturalization of membership in the Communist Party.

13. Suppression of Subversive Propaganda.

Legislation has been passed by various American states attempting to define subversive propaganda, attempting to establish a strict supervision and suppression of the use of various means of dissemination for purposes of subversive propaganda, and fixing the penalties for the carrying on of this type of propaganda.

In the legislation of the American States adopted expressly to prevent and punish the subversive activities of international communism, propaganda is treated in its different aspects. Article 2 of the Chilean Law on the Permanent Defense of Democracy declares that: "Those who spread or encourage, by word of mouth or in writing or by any other means, doctrines that attempt to destroy by violence the social order or political and juridical organization of the Nation are guilty of a crime against the internal security of the State and shall be subject to maximum sentences of imprisonment, confinement, exile or banishment and to fines of from 5,000 to 30,000 pesos." And Article 9 defines propaganda as follows: "Those who introduce, print, store, distribute or sell pamphlets, magazines, illustrations, periodicals, or motion pictures, intended for propaganda purposes, shall be deemed to be spreading or encouraging the doctrines referred to in section 3 of article 2 of the present law. Such propaganda media shall be confiscated." The decree-law adopted by Panama on May 26, 1950, declares every sort of propaganda, activity or disturbance of a Communist nature to be contrary to the democratic and constitutional administration of the Republic.

The United States has passed several laws aimed to control, prevent and punish subversive propaganda. The Foreign Agents Registration Act of 1938 had as its purpose: to disclose to the law enforcement authorities and to the public the identity and details of the activity of those who are acting in the United States on behalf of both governmental and nongovernmental foreign principals. Those whom the Act describes as "agents of a foreign principal" are required to register with the Department of Justice, to file detailed statements with the Department about their activities and affairs, to label any "political propaganda" which they transmit through the mails or in interstate commerce, and to keep prescribed books and records available to designated law enforcement officers.

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The Legislation of the United States which has been most widely invoked against leaders of the Communist Party for their propaganda activity is the Smith Act of 25 June 1940 which was enacted as part of Title I of the Alien Registration Act of 1940, 54 Stat. 670. The act punishes the teaching or advocacy of violent overthrow of the United States Government or of any state or local government in the United States. It also punishes the distribution of printed matter with intent to cause such overthrow, the organizing of a society or group of persons who advocate such overthrow, and membership in such a society with knowledge of its purpose.

(Certain forms of Communist propaganda are difficult to ban by legislation. Communist Governments cannot be prohibited to broadcast propaganda across borders and laws to forbid listening to foreign broadcasts have been found unenforceable. Participation of residents in propaganda activities beyond the border is also difficult to prevent, except by denying passports or visa--see para 16 below.)

14. Use of Mails to Bar Subversive Publications.

Government control of the mails can be used in three ways to bar allegedly subversive publications. The first method is by criminal prosecution of the sender for misusing the mails. The second is to declare such publications unavailable under the espionage or other laws. The third method is through revocation of permit for mailing the material at printed-matter rates, thus making the cost of mailing prohibitive.

15. Use of Perjury or Contempt Prosecutions.

The laws against perjury were not designed to deal with Communism or subversion but in practice they have been used as an adjunct to loyalty oaths, and the powers of legislative bodies and grand juries to investigate Communist activities. Persons denying Communist connections or activities have successfully prosecuted in the United States for perjury.

Contempt proceedings have been used against witnesses who refused to answer questions asked by legislative committees or grand juries regarding alleged Communist activities or affiliations. Various statutes have granted the legislative committee and grand jury the power of subpoena to compel testimony and the production of other evidence.

16. Use of Passports and Exit Permits.

In some American states it is a crime in time of emergency for a citizen to leave or enter the country, or to attempt to do so, without a valid passport. Some countries deny passports to subversives whose departure from the country might be harmful to the interests of the country.

The United States Department of State has published regulations indicating the circumstances in which it will deny passports to Communists and persons suspected of furthering the Communist cause.

Legal penalties have been enacted to punish any person who forges, counterfeits, mutilates, or alters any permit or evidence of permission to depart from or enter the country concerned. Communists have been prosecuted under these provisions.

17. Prosecution of Communists for Miscellaneous Conflicts with the Law.

Communists have been prosecuted for a variety of collisions with the law in addition to violation of immigration and nationality laws. Among the offenses for which they have been tried are speaking at a public forum without a permit, disturbing the peace, inciting a riot, passing out literature in violation of local laws, and unlawful assembly.

18. Exclusion from the Elective Process.

Many American states have laws which involve attempts to keep Communists and subversives off the ballot. Some of the statutes require affidavits denying Communist or subversive affiliation to be executed by political parties and by candidates. Administration officials interpret the statutes and make the decisions to exclude parties or candidates from the ballot.

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